

Filed 7/24/20 P. v. Sahinian CA2/8

Opinion following transfer from Supreme Court

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

EDWARD SAHINIAN,

Defendant and Appellant.

B290389

(Los Angeles County
Super. Ct. No. BA456291)

APPEAL from a judgment of the Superior Court of Los Angeles County, Jose I. Sandoval, Judge. Affirmed.

Megan Hailey-Dunsheath, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Zee Rodriguez, Supervising Deputy Attorney General, Noah P. Hill, Deputy Attorney General, Nathan

Guttman, Deputy Attorney General, for Plaintiff and Respondent.

A jury convicted Edward Sahinian of receiving a stolen vehicle, a violation of Penal Code section 496d. The trial court denied Sahinian's request to reduce his felony conviction to a misdemeanor based on Proposition 47. In December 2019, we reversed and remanded the court's judgment. The Supreme Court transferred the matter back to us to reconsider in light of *People v. Orozco* (2020) 9 Cal.5th 111 (*Orozco*). Supplemental briefs were due July 14, 2020. Neither party filed a brief. Under *Orozco*, we now affirm. Unspecified citations are to the Penal Code.

I

The germane facts are few because interpreting Proposition 47 issue is a legal issue. A jury convicted Edward Sahinian of violating section 496d. Police arrested him in a stolen car in 2017. No evidence set the car's value. At sentencing, Sahinian asked the trial court to apply Proposition 47 to reduce his felony conviction to a misdemeanor because nothing showed the car was worth more than \$950, which is the line between grand and petty theft. The court denied the motion, denied probation, and sentenced Sahinian to the upper term of three years in state prison plus an additional year for one of the prior prison terms, with presentence custody credit for 820 days.

II

Proposition 47 does not apply to Sahinian. The voter initiative amended section 496, subdivision (a), which penalizes receipt of stolen property. (*Orozco, supra*, 9 Cal.5th at pp. 116–

117.) In *Orozco*, the Supreme Court held the amendment to section 496, subdivision (a) did not affect convictions under section 496d. (*Id.* at pp. 118–119.) Thus Proposition 47 does not apply to Sahinian’s crime of receiving a stolen vehicle. We affirm the trial court’s denial of Sahinian’s motion to apply Proposition 47.

III

Sahinian incorrectly faults the trial court for admitting evidence of his previous arrests. This evidence was that he had been arrested three times in the past for stealing cars or possessing a stolen car. This evidence was proper because it suggested Sahinian knew the car in which he was arrested was stolen. We review this issue for abuse of discretion. (*People v. Whisenhunt* (2008) 44 Cal.4th 174, 203 (*Whisenhunt*).)

Additional facts are pertinent now. At trial, an officer testified a key ring with shaved keys was on the floor of the stolen car in which police found Sahinian in 2017. The evidence was shaved keys are for stealing cars.

There also was testimony about three pre-2017 events. These events were in 2005, 2013, and 2014.

Officer Camuy testified that, in 2005, he found Sahinian driving a stolen taxi. The key to the taxi looked unusual, but Camuy could not determine whether it belonged to the taxi or instead whether it had been altered.

Officer Leal testified she went to the scene of a traffic collision in 2013 where police arrested Sahinian after a pursuit. He had been driving a stolen car and had the owner’s driver’s license and two shaved keys. Neither of these keys belonged to the stolen car. Sahinian told Leal he stole the car using keys he had stolen. He used the owner’s key, not the shaved keys.

Officer Liang testified he found Sahinian in 2014 with a stolen car. Sahinian had two shaved keys. He gave a false name, but then admitted he stole the car. He explained how to start cars with shaved keys.

The court instructed jurors to use this evidence for the limited purpose of deciding whether Sahinian knew the vehicle was stolen and whether his actions were or were not the result of mistake.

This evidence was proper. It was relevant. An issue was whether Sahinian knew the car he received was stolen. The shaved keys in the car tended to prove his guilty knowledge, but only if Sahinian *knew* shaved keys were for stealing cars. The episodes in 2005, 2013, and 2014 tended to show Sahinian knew this. Therefore this testimony was proper proof of knowledge and not bad character evidence. Nor was there a probability of undue prejudice substantially outweighing the probative value. There was no abuse of discretion. (See, e.g., *Whisenhunt*, *supra*, 44 Cal.4th at pp. 203–205.)

Sahinian states on page 21 of his reply brief he is not arguing the trial court should have sanitized the evidence. We thus do not pursue this point.

IV

Sahinian argues we must reverse because the trial court provided no adequate remedy for the prosecution's failure to provide timely discovery. He concedes such an error (assuming there was one) is usually harmless unless there is a reasonable probability it affected the verdict. This argument fails for want of this probability.

Sahinian says he suffered prejudice because defense counsel did not have the chance to interview *non-testifying*

witnesses mentioned in the police reports for the episodes in 2005, 2013, and 2014.

Sahinian has not demonstrated prejudice. He does not say in particular how non-testifying witnesses could have helped his cause. Nor can we imagine how other witnesses could have undone the valid damage Officer Liang did in just two pages of transcript. Liang recounted how he personally found Sahinian in 2014 with a stolen car and shaved keys in Sahinian's left front pocket. This was all the prosecution needed. The other evidence of this sort was cumulative. There was no reasonable probability the tardiness of discovery could have affected the verdict.

V

We grant Sahinian's motion to withdraw his argument concerning *People v. Dueñas* (2019) 30 Cal.App.5th 1157.

DISPOSITION

We affirm.

WILEY, J.

We concur:

BIGELOW, P. J.

STRATTON, J.